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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking into the Review)
of the California High Cost Fund B Program)
_____) R.06-06-028

**RESPONSE OF SPRINT NEXTEL
TO MOTION OF THE UTILITY REFORM NETWORK
“TO IMPLEMENT A PROCESS TO ELICIT PUBLIC INPUT ON
POSSIBLE CHANGES IN BASIC SERVICE AS A
RESULT OF REVERSE AUCTIONS IN HIGH COST AREAS”**

Introduction

Pursuant to Rule 11.1(e) of the Commission’s Rules of Practice and Procedure, Sprint Communications Company, L.P. (U 5112 C), Sprint Spectrum L.P. as agent for WirelessCo, L.P. (U 3062 C) and Sprint Spectrum PCS, L.P. (U 3064 C) dba Sprint PCS, and Nextel of California, Inc. (U 3066 C) (collectively referred to herein as “Sprint Nextel”) respectfully submit this Response to the February 19, 2008 Motion of The Utility Reform Network (“TURN”) (“Motion”) in the above-captioned proceeding. For the reasons set forth below, the Commission should deny the Motion.

TURN’s Motion requests a workshop to “develop a plan to reach those consumers and communities that will be most impacted by the reverse auction process”¹ now being evaluated by the Commission in this proceeding. However, there is no need for the outreach process TURN desires, much less a workshop. Even assuming an outreach plan were necessary, which it is not, the Commission hardly needs to conduct a workshop on the elements of an outreach plan.

It remains to be seen whether the Commission will adopt a reverse auction process. If it can identify solutions for the numerous difficulties inherent in devising such a process, the

¹ Motion at 10.

Commission may ultimately endorse reverse auctions as a means for selecting carriers of last resort in allegedly high cost areas in California.² At this stage it is not clear, by any means, that the Commission will do so. In any event, as even the Motion recognizes, reverse auction Working Group 1 has been directed by the Assigned Commissioner to address the definition of basic service and determine the services to be included within a reverse auction bid.³ Working Group 1 has yet to complete its work.⁴ Thus, TURN, which is a member of Working Group 1, still has ample opportunity to voice its concerns (as well as those of its constituents) in that Working Group. Accordingly, at best, the Motion is premature. It would be highly speculative for the Commission to conclude at this time that it needed either an outreach plan or a workshop to devise one.

Nor, even if the Commission were ultimately to adopt a reverse auction process, has TURN demonstrated any legal requirement for the Commission to conduct an outreach program, much less to hold a workshop (or to conduct any other process) to design public participation hearings (“PPHs”) on basic service in California, either in connection with the reverse auction process or otherwise. The idea that the Commission – which has held hundreds of PPHs throughout California in the past 10 to 15 years on a very wide range of topics – somehow needs a workshop to design PPHs is not credible. If anything, the Motion demonstrates that the Commission has *already* examined the concept of “basic” service in ample depth, conducting PPHs, workshops and community meetings to solicit “broad input” on “basic” service and

² See, e.g., R.06-06-028, Assigned Commissioner’s Ruling Establishing Working Groups to Address the Implementation of a Reverse Auction Mechanism, *filed* January 7, 2008 and available at: <http://docs.cpuc.ca.gov/efile/RULINGS/77401.pdf>, and R.06-06-028, Assigned Commissioner’s Ruling to Design and Implement a Reverse Auction Mechanism, *filed* December 13, 2007 and available at: <http://docs.cpuc.ca.gov/efile/RULINGS/76446.pdf> (“the December 13, 2007 ACR”).

³ See Motion at 3, quoting the December 13, 2007 ACR at 5.

⁴ Working Group 1 filed its Progress Report on Reverse Auctions on February 1, 2008. The document is available at: <http://docs.cpuc.ca.gov/efile/REPORT/79378.pdf>.

advanced telecommunications twice in the last seven years.⁵ The Commission hardly needs more PPHs on “basic” service now.

The fundamental problem with the Motion is that, at bottom, its goal makes no economic sense. From an economist’s perspective, the Commission will not obtain useful information by asking people what they want. People want everything, and they want it now, at the latest.⁶ The consumers that TURN would have the Commission query are no exception to this general rule. But it is only when consumers have to make choices among alternatives – that is, when they have to make hard choices in the real world, given limited resources – that the Commission can find out what their true preferences are. Thus, the real information on what consumers want is found from their market choices. Rather than try to design “basic” service, the Commission’s goal should be to allow consumers to freely exercise their preferences and demonstrate their choices, without the Commission skewing their choices through outmoded, inefficient and unfair subsidies.

Discussion

I. THE COMMISSION SHOULD DENY THE MOTION.

A. There is no need for either a workshop or a series of PPHs.

The Motion does not demonstrate any necessity for a workshop, much less for a series of PPHs, whether held in California’s major cities or in its less populated rural areas. TURN has not demonstrated any shortcoming of the current process, assigned to Working Group 1, for considering the elements of any “basic” service to be included in a reverse auction bid. TURN has not shown that any modifications in “basic” service now being considered by Working

⁵ See Motion at 7-8. In addition, as TURN points out, the Commission conducted statewide PPHs on basic service in September and October, 1995. See *id.* at 5.

⁶ Sprint Nextel is confident, for example, that if the Commission were to ask consumers, in the abstract, at PPHs or otherwise, whether they want broadband service included as part of “basic voice service” at little or no additional cost, all or mostly all consumers would say that they do. Such information, however, would not tell the Commission anything that it does not already know.

Group 1 are so dramatic, or so dire, that the Commission must now hold a series of PPHs in remote locations around the State. Absent such a showing, the Motion should be denied.

TURN suggests that “industry representatives” may somehow “dominate” the process for identifying “potential modifications” to the concept of “basic” service in California.⁷ TURN has not shown that it or, for that matter, the Division of Ratepayer Advocates (“DRA”), which is also a member of Working Group 1, will not be able to advocate the concerns of the ratepayers they represent during the Working Group 1 process. Nor has TURN shown any reason for believing that “industry representatives,” which are hardly of one mind when it comes to “basic” service, will “dominate” anything. Moreover, both TURN and DRA will have the same opportunity as other parties to craft, endorse or dissent from the work product and conclusions of the Working Group. Finally, when the deliberations of Working Group 1 have been completed, TURN and its constituents – including any interested individuals residing in allegedly “high cost” areas – will still have their usual means and opportunities for communicating with the Commission, if need be. However they choose to advocate their concerns, the idea that TURN and DRA cannot effectively bring public input into the deliberations of Working Group 1 is not credible and does not pass muster.

B. The Commission is not legally required to hold PPHs as desired by TURN.

TURN acknowledges that the Commission did not adopt its current definition of “basic service” after an evidentiary hearing.⁸ Accordingly, there is no legal requirement for the Commission to hold an evidentiary hearing, much less PPHs.⁹ TURN’s claim that the “spirit” of

⁷ See Motion at 3.

⁸ Motion at 8.

⁹ Cf. Public Utilities Code Section (“PU Code §”) 1708.5, subd. (f). Under PU Code § 1708.5, subd. (f), the Commission “. . . may conduct any proceeding to adopt, amend or repeal a regulation using notice and comment rulemaking procedures, without an evidentiary hearing, except with respect to a regulation being amended or repealed that was adopted after an evidentiary hearing, in which case the parties to the original proceeding shall retain any right to an evidentiary hearing accorded by [PU Code] Section 1708.”

PU Code § 1708.5, subd. (f), suggests that the Commission should *again* “solicit significant public input”¹⁰ misreads the statute. The “spirit” of the statute is clear. The Commission need only use standard “notice and comment rulemaking procedures” and is not obligated, by any means, to hold PPHs in these circumstances (*i.e.*, where no evidentiary hearing was held to define “basic” service in the past).

C. The Motion is, at best, wholly premature.

As even the briefest perusal of its contents would readily disclose, the principal focus of the February 21, 2008 Working Group 1 Progress Report is the service (or services) to be included within the reverse auction bid.¹¹ All of the issues that TURN believes the Commission should address are within the direct focus of Working Group 1. There is no need for a separate process, through a workshop and series of PPHs, to consider the components of “basic” service.

Moreover, as is also apparent from the Progress Report, Working Group 1 faces very “complex issues”¹² which raise substantial questions whether the Commission can or should proceed with a reverse auction. In fact, “The members of [Working Group 1] encourage the Commission to seek further comment on specific proposals to develop a more complete record upon which to make [the] important decisions”¹³ required for resolution of those issues. Sprint Nextel agrees with the need for further comment from the parties and trusts that the Commission will adopt this recommendation. At that time, all parties, including TURN, will have the opportunity to submit further comments if the Commission adopts this suggestion. In short, it remains to be seen whether the Commission will proceed with reverse auctions, and until that is known, the questions raised in TURN’s motion are, at best, completely premature.

¹⁰ Motion at 8.

¹¹ See Working Group 1 Progress Report at 4-10. As a member of Working Group 1, TURN undoubtedly knew what the Progress Report would address at the time that TURN filed its Motion. Regardless of whether TURN was or was not attempting to steal a march on the Progress Report, TURN seems to have given little weight, and scant attention, to the efforts of Working Group 1.

¹² See *id.* at 2 (underscoring removed).

¹³ *Id.*

D. Holding PPHs would not result in the Commission's gaining any information of value to the Commission.

As mentioned above, asking consumers to state “what they want” is an exercise of no economic value. Consumers usually want everything, especially if it is subsidized and the source of the subsidy is not visible or easily understood. Moreover, even a sophisticated marketing survey, much less a series of informal PPHs, could not guarantee that the Commission would be able to predict what consumers really want. If PPHs were held, TURN, with or without the assistance of other advocacy groups, would likely be able to bring constituents to locations designated by the Commission to tell the Commission, in a more or less staged manner, “what they want.” Such events are unlikely to tell the Commission anything it would not already know.

TURN apparently would have the Commission hear unsworn comments at “open microphones,” not subject to any questioning, much less cross-examination, whether “wireless and other nontraditional voice services are as reliable as traditional wireline service” or whether such services are desired by consumers as “elements of basic service.”¹⁴ Such statements rarely have more than anecdotal weight. In addition, perhaps to TURN’s surprise, if not also its consternation, some consumers might tell the Commission – as the Greenlining Institute has already done, quite persuasively – that individual consumers should be able to decide what services they want, and that they should be able to purchase wireless services as their “basic” service if they want to do so.¹⁵ If one consumer wants wireline service, while another wants wireless service, as his or her “basic” service, how would the Commission decide which consumer is right? If one consumer wants a white pages directory as part of “basic” service, but

¹⁴ Motion at 9.

¹⁵ See R.06-05-028, Reply Comments of the Greenlining Institute on the Scoping Memo of the Commission’s Rulemaking to Conduct a Comprehensive Review of its Telecommunications Public Policy Programs, *filed* September 14, 2007 and available at <http://docs.cpuc.ca.gov/efile/CM/72802.pdf>, at 2-9. It is apparent from review of the Greenlining Institute’s Reply Comments that TURN has no monopoly on knowing what consumers want or which services would most benefit consumers of limited means.

another doesn't, which consumer is correct? As there is no inherently "correct" answer, the Commission should let consumers decide for themselves. At best, a PPH might help the Commission identify which advocacy group, whether TURN, Greenlining Institute, or some other group, is best able to bring consumers to a PPH in one remote location or another. It would yield little else.

The Commission might or might not be influenced by statements at a PPH, but in any event, it would not be any closer to knowing what consumers *really* want because only the marketplace can generate such information. Rather than attempt to divine such preferences, it would be better for all consumers if the Commission allowed consumers to choose from a range of options that transcended the limited choices that TURN, apparently, if not also the incumbent local exchange carriers ("ILECs"), would let them consider. The Commission should reject that narrow paradigm. Consumer sovereignty should be given a much broader range of choices.

II. COMMISSION EFFORTS TO DEFINE THE "BASIC" OR, FOR THAT MATTER, "BROADBAND" SERVICES THAT WILL BE SUBSIDIZED WILL INEVITABLY PROVE TO BE NEITHER "SERVICE-NEUTRAL" NOR "COMPETITIVELY NEUTRAL."

Although it should be denied for the reasons set forth above, TURN's Motion does highlight the difficult path the Commission travels when it tries to identify the "basic" and, for that matter, the "broadband" service or services it will subsidize. For at least the past 13 years, reflecting assumptions that may have been appropriate in the monopoly local exchange service environment,¹⁶ the Commission has operated from the view that it should identify a service that it believed most people wanted as their "basic" service, and that this would be the service that it would subsidize, even where carriers encountered (or allegedly encountered) "high costs" to provide that particular service. The unstated message was that the Commission would subsidize

¹⁶ See *Rulemaking on the Commission's Own Motion into Universal Service and to Comply with the Mandates of Assembly Bill 3643*, R.95-01-020; *Investigation on the Commission's Own Motion into Universal Service and to Comply with the Mandates of Assembly Bill 3643*, I.95-01-021; Opinion [D.96-10-066] (1996) 68 CPUC 2d 524, 1996 Cal. PUC LEXIS 1046 ("the Universal Service decision").

its chosen service even if it might be more efficient, and less costly, to subsidize other services. This surely is the approach that underlies the Universal Service rulemaking, R.95-01-020, and the Universal Service decision.

The Commission should move beyond this outmoded paradigm. The Commission should say instead, “We will let individuals decide for themselves which services best meet their needs. We will ensure that persons of limited means, who qualify for assistance on a means-tested basis, have the purchasing power to buy what we believe is equivalent, or largely equivalent, to the service that, up to now, has been known as ‘basic’ service, and *beyond that*, we will let the marketplace decide what services are available and what they should cost because this is the most efficient means of allocating society’s scarce resources.” This is the approach the Commission should take with regard to subsidizing both “basic” service and “broadband” service: let the marketplace decide.¹⁷ Such an approach would not only be more economically efficient, but demonstrably fairer to all ratepayers as well, and would put an end to the existing monopoly-era pro-ILEC “solutions” that are distorting the marketplace.

The economic inefficiency of providing subsidies was masked in the monopoly era because it did not involve the Commission giving economic assistance to one market participant, *i.e.*, one carrier, over another. In a competitive marketplace, however, it is virtually impossible to avoid the economic inefficiencies caused by subsidizing “basic” service in the traditional manner. Choices between services and carriers are being distorted because consumers are not

¹⁷ See Order Instituting Rulemaking on the Review of the California High Cost Fund B Program, R.06-06-028, Interim Opinion Implementing California Advanced Services Fund [D.07-12-054] __ CPUC 2d __, 2007 Cal. PUC LEXIS 583, available at http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/76947.doc (hereinafter, “the CASF decision”). The CASF decision appears to reflect a belief that the Commission can somehow devise a “service-neutral, provider-neutral, competitively neutral” process for deciding which carrier should enjoy a Commission-dispensed subsidy for providing broadband services in “unserved” or “underserved” areas of California. Just as the Commission is running into immense difficulties in devising a reverse auctions process, so also is the Commission encountering immense difficulties in devising a neutral “scoring system” to determine the broadband provider that will receive Commission funding in such areas. The post-CASF Workshop comments of the parties, available through <http://docs.cpuc.ca.gov/published/proceedings/R0606028.htm#documents>, reflect profound disagreements on how a supposedly neutral “scoring system” should be constructed by the Commission.

seeing the true cost of service. As matters stand, some carriers are being forced to subsidize others. In identifying the services to be subsidized, the Commission inevitably becomes involved in selecting the carriers that will be subsidized and those that won't. The Commission should instead allow consumers to compare and choose between services where the true cost of service is not masked by cross-subsidies between services and carriers. Only if it acts in this manner will the Commission truly be service-neutral and competitively neutral.

Apart from subsidizing those of limited means and conducting Public Policy Programs in the manner the Commission finds appropriate in R.06-05-028,¹⁸ the Commission should exit the subsidy business. Sprint Nextel urges it to do so as soon as possible, even in the allegedly "high cost" areas for which the Commission is attempting to devise reverse auctions. If the Commission takes this step as urged by Sprint Nextel, there will not be any need for a workshop to design a series of PPHs to define "basic" service, since consumers will determine which services they want and the marketplace will respond to consumer demand without artificial distortions.

Conclusion

For the reasons set forth above, the Commission should deny the Motion.

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¹⁸ R.06-05-028, Rulemaking on the Commission's Own Motion to Review the Telecommunications Public Policy Programs, was instituted by the Commission on May 25, 2008, and is currently pending before the Commission.

Respectfully submitted:

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Dated: March 5, 2008

Certificate of Service

I, Earl Nicholas Selby, hereby certify that, on March 5, 2008, I caused a copy of the foregoing document, entitled:

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TO MOTION OF THE UTILITY REFORM NETWORK
“TO IMPLEMENT A PROCESS TO ELICIT PUBLIC INPUT ON
POSSIBLE CHANGES IN BASIC SERVICE AS A
RESULT OF REVERSE AUCTIONS IN HIGH COST AREAS”**

to be served on the parties to this proceeding by electronic mail to the electronic mail addresses on the service list maintained on the Commission’s Web site for this proceeding, as indicated on the following page.

I also certify that, on March 5, 2008, I caused a copy of the foregoing document to be served on the following persons at the California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, CA 94102, by United States Mail, first class postage prepaid:

Commissioner Rachelle B. Chong, Advisor Robert Haga, and Administrative Law Judge Thomas R. Pulsifer. I further certify that, on March 5, 2008, I caused a copy of the foregoing document to be served on: La Tanya Linzie, Cox California Telcom, LLC, 2200 Powell Street, Suite 1035, Emeryville, CA 94608, by United States Mail, first class postage prepaid.

I certify that the above statements are true and correct.

Dated: March 5, 2008 at Palo Alto, CA.

_____/s/
Earl Nicholas Selby

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